

HOUSE BILL NO. 372

INTRODUCED BY J. HURDLE

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE EXEMPTION OF CERTAIN AGENCIES FROM REQUIREMENTS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 2-4-102 AND 2-4-110, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, ~~except that the provisions of this chapter do not apply to the following:~~

~~—— (i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;~~

~~—— (ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;~~

~~—— (iii) the board of regents and the Montana university system;~~

~~—— (iv) the financing, construction, and maintenance of public works;~~

~~—— (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.~~

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "Interested person" means a person who has expressed to the agency an interest concerning

1 agency actions under this chapter and has requested to be placed on the agency's list of interested
2 persons as to matters of which the person desires to be given notice. The term does not extend to
3 contested cases.

4 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration,
5 charter, or other form of permission required by law but does not include a license required solely for
6 revenue purposes.

7 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,
8 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

9 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of
10 right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting
11 any person as a party for limited purposes.

12 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,
13 agency, or public organization of any character.

14 (10) "Register" means the Montana Administrative Register.

15 (11) "Rule" means each agency regulation, standard, or statement of general applicability that
16 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
17 requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

18 (a) statements concerning only the internal management of an agency and not affecting private
19 rights or procedures available to the public;

20 (b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

21 (c) rules relating to the use of public works, facilities, streets, and highways when the substance
22 of the rules is indicated to the public by means of signs or signals;

23 (d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
24 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially
25 relating to the seasonal recreational use of lands and waters owned or controlled by the state when the
26 substance of the rules is indicated to the public by means of signs or signals;

27 (e) rules implementing the state personnel classification plan, the state wage and salary plan, or
28 the statewide budgeting and accounting system;

29 (f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
30 accordance with 2-4-306 and must be published in the ARM.

(12) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals. The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 2. Section 2-4-110, MCA, is amended to read:

"2-4-110. ~~Departmental~~ Agency review of rule notices. (1) The board of regents and the head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that ~~department~~ agency to review each ~~departmental~~ agency rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the ~~department~~ agency, including units attached to the ~~department~~ agency for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the rationale for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

1 (3) The person appointed under subsection (1) shall sign each notice for which this section
2 requires a review. The act of signing is an affirmation that the review required by this section has been
3 performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice
4 that does not have the signature required by this section."

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6 NEW SECTION. **Section 3. Applicability.** [This act] applies to new rules, amendments to rules,
7 and rule repeals proposed and contested case proceedings begun after [the effective date of this act].

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